



LAW SOCIETY OF SOUTH AFRICA

MEDIA RELEASE

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For immediate release

LAW SOCIETY WARNS THAT DIRECT PAYMENTS BY RAF MAY RESULT IN ELECTRONIC DEBACLE FOR CLAIMANTS

The Law Society of South Africa (LSSA) has warned the Road Accident Fund (RAF) that the introduction of direct payments to motor vehicle accident claimants by excluding attorneys from the system will effectively deny injured road accident victims access to justice, legal representation and access to the courts. Also, the practical problems in implementing such an electronic system by the RAF, which falls under the Department of Transport, could mirror the recent electronic licensing debacle under the eNatTiS system implementation.

The RAF recently advertised its intentions to pay claimants direct by calling on current and new claimants to provide the RAF with their banking details.

LSSA Chief Executive Officer, Raj Daya, says: 'The banking details of some 400 000 old and current claims need to be captured and verified in terms of Financial Intelligence Centre legislation. This excludes the numerous new claims lodged every day. Many claimants, particularly illiterate or unsophisticated claimants, may not even have bank accounts.' The Chairperson of the LSSA's Motor Vehicle Accident Committee, Cape Town attorney Jacqui Sohn, points out that impoverished current plaintiffs, who have already waited on average 4.8 years for their claims to be finalised, can expect further lengthy delays while they wait for an RAF official to "help" them to open a bank account, and then wait for the new direct payment system to be implemented and function efficiently.

According to Mr Daya, injured claimant will be left to the mercy of the 'faceless RAF bureaucracy'. Not only will this involve claimants having to find their way around the current system, but also the morass of the new system which the RAF intends to implement.

'Without the specialised knowledge of attorneys, claimants will be unable to obtain proper compensation. Members of the public, particularly the more unsophisticated accident victims, cannot be expected to know how to calculate claim for future loss of earnings or the value of their claim for general damages, such as pain and suffering, and loss of amenities,' says Mr Daya.

Earlier this year, the LSSA's MVA committee made submissions to the RAF warning it that the implementation of the direct payment model will have a negative effect on the public, particularly on illiterate or unsophisticated litigants.

The LSSA has highlighted the following in its submissions:

- In terms of the current system, where fault is the basis of compensation, most if not all claims are dealt with on a contingency basis by attorneys. That means that attorneys only receive payment from the client once the payment is received from the RAF. No legal representative would be prepared to take a claim on risk. Most of the time claims call for a substantial financial investment by the claimant for reports by medical and actuarial specialists, as well as from forensic and accident reconstruction specialist. Attorneys often incur these expenses on behalf of claimants.
- Under the current system, most major medical aids are prepared to fund their member's costs relative to an accident as against an undertaking from the member's attorney to refund any costs recovered. On this basis they await the outcome of the member's claim, rather than pursue a 'supplier's' claim. If payment is not made to the attorney, this system will collapse. Medical aids will either pursue 'direct' claims, thus flooding the RAF with thousands of individual claims, or the medical aid will decline to meet the member's costs, to the obvious detriment of the member.
- In virtually every existing claim in the system, the basis upon which an attorney accepts the instruction is that the attorney is irrevocably nominated as agent for the receipt of the proceeds of the claim. This is the underlying *contract between attorney and client*. Even if the RAF is 'empowered' by regulation to by-pass the attorney, this would not negate a contractual relationship between attorney and client, and payment not in accordance with the contract would not discharge the claim. Any attempt to legislate against this would be

an undue interference in the right of the public to contract freely and to appoint a legal representative of choice.

For many years, the LSSA has advocated that the RAF should notify a claimant immediately that payment has been made to his/her attorney, a procedure that is common practice in other jurisdictions. This would be infinitely more manageable for the RAF than setting up a whole new bureaucratic system that may result in many claimants, particularly unsophisticated claimants, being denied access to justice.

Editor's note:

The Law Society of South Africa brings together its six constituent members – the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces, the Black Lawyers Association and the National Association of Democratic Lawyers – in representing South Africa's 17 000 attorneys and 4 500 candidate attorneys.

In Afrikaans items, please refer to the 'Prokureursorde van Suid-Afrika'.

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